

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

2. Complainant filed Charge Number 2008CF1869 on January 24, 2008, alleging Respondent failed to promote her based on race (black) and sex (female), that Respondent eliminated her position based on race (black), and that Respondent retaliated against her by not promoting her and eliminating her position for complaining about race discrimination.
3. On February 18, 2009, and March 4, 2009, respectively, the Commission entered Default Orders on the above-referenced Charges and referred the matters to the Administrative Law Section for a hearing.
4. These matters were set for a hearing on damages on November 10, 2009.
5. On the date of the public hearing, Respondent failed to appear. Complainant appeared, through her attorneys, and presented her case on damages.
6. At or near the beginning of the hearings, Complainant made a motion to consolidate the matters for purposes of presenting evidence on damages.
7. Chief Judge Michael Evans consolidated the matters at 11:30 AM, approximately thirty minutes after the second hearing was scheduled.
8. At the time Chief Judge Michael Evans made his ruling, Respondent had still not appeared.
9. Complainant is an African-American female who is currently 55 years old.
10. Complainant began employment with Respondent in August 2003.
11. Complainant is currently employed by Respondent as a school counselor for the class of 2013.
12. When Complainant first became employed by Respondent, she was a counselor who carried a case load.
13. Complainant had students in grades 9 through 12, either the whole combination of them or one whole class.
14. Complainant's caseload was then given to one of her colleagues.

15. From March 2007 to August 14, 2007, Respondent harassed Complainant.
16. On March 13, 2007, Milton Patch (over 40), the Principal at Proviso East High School, gave Complainant until March 19, 2007, to complete typing and inputting data that was collected during presentations to the students.
17. The task Principal Patch gave Complainant was impossible to complete without help.
18. Assistant Principal Dan Johnson (over 30) would not allow the clerical staff to help input the data.
19. On March 16, 2007, Principal Patch attempted to have Complainant assigned to the Career Center as a Career Counselor because she had been unable to complete the project he had given her on March 13, 2007.
20. Complainant's job performance as a Career Counselor at Proviso East High School met Respondent's legitimate expectations.
21. On or about March 21, 2007, Complainant engaged in a protected activity when she notified Principal Patch that she believed she had been discriminated against because of her race and gender.
22. On April 17, 2007, Respondent issued Complainant a letter of dismissal without cause.
23. On June 18, 2007, Respondent rescinded the letter of dismissal.
24. Respondent had not harassed similarly-situated younger, non-black employees.
25. In April 2007, Complainant applied via email for the Proviso East High School Guidance Counselor Department's Chair position.
26. In May 2007, Respondent's School Board named Megan Cahill (then 30) as the new Department Chair, effective August 14, 2007.
27. Respondent was not granted an interview for the Chair position.

28. On August 14, 2007, Complainant reported to work and found that most of her office effects had been removed from the Guidance Department and sent to the Career Center without her knowledge.
29. Complainant's office had been given to Megan Cahill, the Department Chair.
30. There was another vacant office in the Guidance Department that Cahill could have used.
31. Complainant had been the Respondent's Site Supervisor for the Triton College Continuing Education Program at Proviso East High School.
32. Complainant had satisfactorily performed her duties as Respondent's Site Supervisor for the Triton College Program.
33. On or about July 31, 2007, Complainant was denied a promotional opportunity when she was verbally notified by Patricia Granados (non-black, female), President of Triton College, that she no longer would be performing the Site Supervisor's duties.
34. The reason given to Complainant by Ms. Granados was that the position title was changed to Site Manager, and that the newly-selected manager would have to be presently employed at Respondent's math and science academy to be considered for the vacancy.
35. There were no posting that advertised the newly-titled Site Manager vacancy.
36. Respondent did not provide Complainant with any documentation or reason for denying her the opportunity to apply for the newly-titled position.
37. During the time in question, Complainant had not engaged in any willful acts or misconduct that merited being denied the opportunity.
38. Complainant believes that other similarly-situated, non-black, male applicants were aware of the vacancy and were not denied the opportunity to apply for the vacancy.
39. Complainant would have applied for the vacancy, if she had been aware of it.

40. Complainant believes that other similarly-situated, non-black site supervisors have not experienced an elimination of their positions by having their position titles changed.
41. Megan Cahill had received an annual stipend of \$6,333 for her Department Chair position.
42. In 2006, Complainant had earned \$7,505.76 as the Site Supervisor for the Triton College Program.
43. Complainant took out a loan at Capital One to make-up for the money she was not earning from her second job at Triton College.
44. Complainant also took a loan from InBank to make-up for the money she was not earning from the additional job.
45. The total interest paid on the InBank loan was \$494.55.
46. Complainant paid total interest of \$879.84 regarding the Capital One loan.
47. On December 2, 2009, Complainant filed a petition for attorney's fees for work performed by Attorney Annie Shaw and Attorney Justina De Grado.
48. Despite being served with the fee petition, Respondent did not file any response to the fee petition.
49. Ms. De Grado has been licensed to practice law in the state of Illinois since May 2007.
50. Ms. De Grado has experience representing clients on general civil litigation in state and federal courts.
51. Ms. Shaw has been licensed to practice law in Illinois since November 1995.
52. Ms. Shaw has experience representing clients on general civil litigation in state and federal courts.
53. Ms. De Grado normally bills clients at \$225.00 per hours; Ms. Shaw normally bills clients at \$275.00 per hour.

54. Complainant's fee petition attached invoices that showed the total time billed for both attorneys was 70.25 hours.

55. Complainant requests a total of \$16,897.92 for attorney's fees.

56. The fee petition itemizes the services rendered for Complainant and the time allocated for these tasks as to each attorney.

57. The fee petition requests \$2,612.50 for intraoffice conferences between Ms. Shaw and Ms. De Grado.

58. The fee petition requests \$1,375.00 for Ms. Shaw to appear in court with Ms. De Grado.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" and Respondent is an "employer" as those terms are defined in the Illinois Human Rights Act (Act), 775 ILCS 5/1-103(B) and 5/2-101(B).

2. The Commission has jurisdiction over the parties and the subject matter of this action.

3. In accordance with the Default Orders entered on February 18, 2009 and March 4, 2009, Respondent is liable for violations of the Act that prohibits discrimination based on race, sex, age, and retaliation.

4. Complainant has failed to demonstrate that she is entitled to emotional distress damages.

5. Complainant has demonstrated that she is entitled to the annual stipend paid to the Guidance Department's Chair in 2007, 2008 and 2009, in the total amount of \$18,999.00.

6. Complainant has demonstrated that she is entitled to \$7,505.00, the income that she would have made if she had been given the Site Manager position at Triton College.

7. Complainant had demonstrated that she is entitled to recover total interest payments in the amount of \$1,374.39 that she made on loans that she took to make-up for the lost income she would have generated had Respondent not failed to give her the Site Manager position.

8. In light of the finding of liability against Respondent, Respondent should be ordered to cease and desist from any race, age and sex discrimination, and retaliation in the future.

9. Because of their failure to file appearances and respond to Complainant's fee petition, Respondent has waived the issue of fees.

10. Attorney Paula De Grado's hourly rate of \$225.00 is reasonable.

11. Attorney Anne Shaw's hourly rate of \$275.00 is reasonable.

12. Some of the hours worked by Attorney De Grado and Attorney Shaw are unreasonable, duplicative and/or excessive. As such, a reduction in the fee award is proper.

13. Complainant has demonstrated that she is entitled to attorney's fees in the amount of \$12,910.42.

Discussion

Damages

Emotional Distress

Emotional distress damages are recoverable as actual damages for injury or loss suffered by a complainant and caused by violations of the Act. **Village of Bellwood v. Illinois Human Rights Comm'n, 184 Ill. App.3d 339 (1st Dist. 1989).** Complainant has the burden of coming forward and presenting evidence for the relief she seeks. Complainant must prove by a preponderance of the evidence that she is entitled to emotional distress damages.

It is not apparent from the record or the testimony that Complainant suffered a severe emotional reaction to Respondent's conduct and statements. I find that the degree of emotional distress was not significantly over and above that which would be expected from "the mere fact of a civil rights violation." **Harris and Vinylgrain Industries of Illinois, IHRC, ALS. No. 11382, Aug. 1, 2001.** Therefore, I recommend that no emotional distress damages be awarded.

Lost Wages and Lost Stipend

Complainant testified that Megan Cahill, who was promoted in 2007 to the job that Complainant sought (*i.e.*, Department Chair) received an annual stipend of \$6,333.00 over and above the salary of the other counselors. Thus, I recommend that Complainant be awarded three years of stipend (2007, 2008 and 2009) in the total amount of **\$18,999.00**.

In addition, Complainant testified that she earned \$7,505.00 in 2006 as the Site Supervisor for Triton College's Adult Program. Thus, I recommend that Complainant be awarded **\$7,505.00** for Respondent's failure to hire her for the newly-titled position in 2007. I find that any additional lost wages regarding the Triton position are too speculative; and therefore, I do not recommend additional lost wages beyond 2007.

Cease and Desist

Since Default Orders have been entered and there has been a finding of liability against the Respondent, it is recommended that Respondent be ordered to cease and desist from race, age and sex discrimination, and retaliation in the future. See **Magraff and Alexopolis, IHRC, ALS No. 7082, Nov. 8, 1993.**

Other Actual Damages – Interest on loans

Complainant testified that she took out loans at Capital One and InBank to make up for the money she was not earning from additional jobs at Proviso, specifically the

Triton Adult Program's Site Supervisor position. As a result, Complainant testified, and submitted documentation from Capital One and InBank, that evidenced she had paid interest on those loans. Had Complainant not lost her position at Triton College, she would not have taken the loans or been in the position of paying interest on the loans. Complainant's Ex. B, as well as Complainant's testimony, indicated that the total interest she paid on the Capital One loan was \$879.84. As for the InBank loan, Complainant's testimony and Ex. B indicated that she paid a total of \$494.55 in interest. In sum, I recommend that Complainant be awarded \$1,374.39 for interest on the two loans.

Prejudgment Interest

Respondent should also be ordered to pay Complainant interest on the lost wages and lost stipend award contemplated by Section 8A-104(J) of the Human Rights Act (735 ILCS 5/8A-104(J)), and calculated as provided in Section 5300.1145 of the Commission's procedural rules.

Attorney's Fees

As permitted by my order entered on November 11, 2009, Complainant's attorneys timely submitted a fee petition on November 18, 2009. On November 24, 2009, I entered another order requiring Complainant to serve a copy of the fee petition on Respondent's attorney at the last known address. On December 2, 2009, Complainant re-filed her fee petition with the Commission. In addition, on December 2, 2009, Complainant's attorneys filed a certificate of service with the Commission certifying that they served the Complainant's fee petition on the Delgado Law Group c/o Holly Tomchey at 1441 S. Harlem Avenue, Berwyn, Illinois 60402 via U.S. Mail. Respondent has failed to file an appearance and response to the Complainant's fee petition.

In considering petitions for the award of attorney's fees and costs, the Commission requires that any award be fair and reasonable. The most common measure of fees remains the charging of a set rate per hour for work performed in consideration of the client's matter at hand, and multiplying that figure by the number of hours expended.

The standard for determining the proper fee award by the Commission is found in **Clark and Champaign National Bank, 4 Ill HRC Rep 193 (1982)**. Respondents chose not to file a timely response. Since no response was filed, all issues related to the petition are waived. **Leseiko and Chase/Ehrenberg & Rosene, Inc., IHRC, ALS No. 11592, Mar. 23, 2004**. However, I have still analyzed the billing rates and hours requested to determine if they meet appropriate standards of reasonableness.

a. Reasonable Hourly Rates

In the fee petition, the law firm of Shaw & Associates requests \$16,897.92 for the time of Attorney Anne Shaw and Attorney Justina De Grado on this case. This amount was calculated using 70.25 hours of time. In addition, the fee petition states that Attorney Shaw's hourly rate is \$275.00 and that Attorney De Grado's hourly rate is \$225.00.

Since 1995, Attorney Shaw has been licensed as an attorney in the State of Illinois. Her practice concentrates on general civil litigation in the state and federal court systems. Attorney De Grado has been licensed to practice law in the state of Illinois since May 2007. Her practice also concentrates on general civil litigation.

Thus, even without Respondents' waiver of fee petition objections, I find Attorney Shaw's and Attorney De Grado's rates reasonable, and in accordance with the Commission's recent orders on attorney's fees.

b. Number of Hours Reasonably Worked

Once the hourly rate is decided, the next step is to determine whether the hours claimed are reasonable. The total fee requested is \$16,897.920, based on a total of 70.25 hours for both attorneys. Although uncontested by Respondents, I still must carefully examine fee statements. I find that it is inappropriate to bill for certain intraoffice strategy meetings between the two attorneys. It appears that Attorney Shaw is billing time for training Attorney De Grado. In addition, I find that it is unreasonable for Attorney Shaw to bill time for court appearances to accompany Attorney De Grado. This was not a complex hearing. Thus, Attorney Shaw's time was really used for training her associate. For the reasons set forth below, I recommend that the requested attorney's fee be reduced. Thus, I recommend that Complainant be awarded attorney's fees in the total amount of **\$12,910.42.**

Recommendation

It is recommended that the Commission:

- (1) order Respondent to pay Complainant lost wages and lost stipend in the amount of \$26,504;
- (2) order Respondent to pay Complainant the interest on the bank loans in the amount of \$1,374.39;
- (3) award prejudgment interest on the lost wages, lost stipend award, and interest on the loans award, in accordance with the Illinois Human Rights Act and the Commission's procedural rules;
- (4) order Respondent to pay Complainant attorney's fees in the amount of \$12,910.42;
and
- (5) order Respondent to cease and desist from any age, race and sex discrimination, as well as retaliation, in the future.

HUMAN RIGHTS COMMISSION

BY: _____

**REVA S. BAUCH
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION**

ENTERED: January 27, 2010